

***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
* HON'BLE SRI JUSTICE N. BALAYOGI**

+W.A.No.1213 of 2017

Date: 20-06-2018

#Between:

The District Cooperative Marketing Society Ltd.,
represented by its Business Manager,
Karimnagar.

... Appellant

And

The Deputy Commissioner, Endowments
Department, Warangal Zone, Warangal and 2 others

... Respondents

! Counsel for the Petitioner : Mr. A. Sudershan Reddy,
Senior counsel

^ Counsel for Respondents 1 & 2: GP for Endowments
Respondent 3 : Mr. D. Jagan Mohan Reddy

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? Cases referred

**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N. BALAYOGI**

W.A.No.1213 of 2017

JUDGMENT: *(per V. Ramasubramanian,J)*

The appeal arises out of an order of the learned single Judge dismissing a writ petition filed by the appellant herein.

2. Heard Mr. A. Sudhershnan Reddy, learned senior counsel appearing on behalf of Mr. M. Ram Mohan Reddy, learned counsel for the appellant, the learned Government Pleader for Endowments (Telangana) and Mr. D. Jagan Mohan Reddy, learned counsel for the 3rd respondent.

3. On a complaint made by the Executive Authority of the 3rd respondent institution, the Assistant Commissioner, Endowments Department filed a report under Section 83 (1) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (A.P. Act 30 of 1987) to the effect that the appellant had encroached upon a land of an extent of Ac.1.14 guntas in Survey No.170/ , 171 , 174 situated at Jagityal Town and Mandal, Karimnagar District. On the basis of the said report, the Deputy Commissioner passed an order in O.A.No.149 of 2006 dated 28-06-2008, directing the appellant to remove the encroachment and deliver possession of the land mentioned in the application. The appellant made a claim before the Deputy Commissioner that the subject land was purchased by the appellant,

which is a Cooperative Institution, under a registered sale deed dated 27-02-1961 and that the appellant Society had also put up constructions thereon and had been in enjoyment of the land for more than 5 decades. But the Deputy Commissioner held that the sale in favour of the appellant was invalid, in as much as no prior permission of the competent authority was obtained, as required under Rule 375 of the Hyderabad Government Religious Endowments Rules.

4. Aggrieved by the said order of the Deputy Commissioner dated 28-06-2008, the appellant filed a writ petition in W.P.No.17143 of 2008. But the same was dismissed by the learned Judge on the ground that the Deputy Commissioner's opinion on the interpretation of Rule 375 was correct and that therefore, the order did not call for any interference. Therefore, challenging the said order of the learned Judge, the appellant has come up with the above appeal.

5. Assailing the judgment of the learned single Judge, it was contended by Mr. A. Sudhershnan Reddy, learned senior counsel appearing for the appellant, that the appellant is a Cooperative Society registered under the Andhra Pradesh Cooperative Societies Act; that the society purchased the land in question under a registered sale deed of the year 1961, from the trustee of the temple; that the sale took place about 26 years before the A.P. Act 30 of 1987 was enacted and 46 years before the Amendment Act 33 of 2007 was passed; that in cases of this nature, an authority under the Act may not be competent to decide disputed questions relating

to title and that in such cases, the only course of action open to the 3rd respondent was to go to the Civil Court. The learned senior counsel placed reliance upon a judgment of the Supreme Court in ***Government of Andhra Pradesh v. Thummala Krishna Rao and another***¹, to drive home the point that the provisions of the special enactments providing for the summary remedy of eviction, can be invoked only as against an encroacher and not against persons claiming valid title.

6. We have carefully considered the above submissions.

7. There is no dispute about the fact that the land in question was purchased by the appellant under a sale deed dated 27-02-1961 executed by one Javvaji Pullaiah. It was claimed by the seller in the sale deed that the land in question belonged to his family and that the family created a trust in favour of the family deity Sri Rajeshwara Swamy Dharmashala Jagtial and endowed the property and that for the purpose of development of the family deity and the trust, he was selling away the land, which formed part of the trust property.

8. It is also true that the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30 of 1987), came at least 26 years after the purchase of the land in question by the appellant herein. The Act received the assent of the President on 15-05-1987. But before the 1987 Act, the Hindu Charitable and Religious Institutions in the State of Andhra Pradesh were regulated

¹ (1982) 2 SCC 134

by the Andhra Pradesh Charitable and Hindu Religious and Endowments Act, 1966. It must be pointed out that the State of Andhra Pradesh itself was formed only in the year 1956 and hence, until the enactment of the year 1987, the Institutions were regulated by the 1966 Act. In the interregnum between 1956 and 1966, the Hyderabad Government Religious Endowment Rules held the field. Rule 375 (1) of these Rules, which was extracted in the order of the Deputy Commissioner, required prior sanction of the Member of the Board of Revenue. Obviously and admittedly, the appellant did not take prior sanction, before purchasing the property under sale deed dated 27-02-1961.

9. The decision of the Supreme Court in **Thummala Krishna** arose out of a dispute between Osmania University, for whose benefit the Government acquired certain lands. The dispute was between the University (the beneficiary of the acquisition) and the original owners themselves. The original owners claimed that the land in question was not acquired by the Government, but Osmania University contended that the land was acquired for their benefit. When the attempt made by the University to recover the land through civil proceedings failed up to the High Court, the University requested the Government to initiate proceedings for eviction under the Land Encroachment Act, 1905. It was in that context that the Supreme Court said in **Thummala Krishna** that the Act can be invoked only as against the encroachers and not against a person, who claimed an independent right and title.

10. But in the case on hand, the appellant is a third party. They claimed title to the land under a sale deed executed by one member of the family, which, even according to that family member, had endowed it as a trust property in favour of the deity. Therefore, the case on hand cannot be compared to the case before the Supreme Court in ***Thummala Krishna***.

11. Though it is contended by Mr. A. Sudershan Reddy, learned senior counsel for the appellant that the appellant is a bonafide purchaser having purchased it from a person belonging to the family, which created the endowment itself and that even the sale deed proceeded on the footing that the sale was necessitated by the requirements of funds for the development of the temple, we cannot overlook the fact that the procedure prescribed for the sale of such a property was not followed. Let us keep aside for a moment, Rule 375(1) of the Rules requiring prior sanction. Even then the sale deed relied upon by the appellant may not go to the rescue of the appellant. It is stated in the sale deed by the seller that the property was endowed to the benefit of the family deity. But the vendor Mr. Javvaji Pullaiah did not even describe himself as one of the trustees. We do not even know whether he was a trustee. Once a property is indicated by the seller himself to have been endowed for religious purposes, it is the responsibility of the buyer to ensure that at least all the trustees join together in the execution of the sale deed. In fact, Section 92 of the Code of Civil Procedure was repealed only by the 1987 Act. Therefore, the appellant ought to have made enquiries

as to who were the trustees and whether there was a resolution of the Board of Trustees and as to how one member of the family, who did not even describe himself to be a trustee, could execute the sale deed. The failure of the appellant to make such enquiries, as are normally required of a bonafide purchaser, was fatal.

12. Once, it is clear that the sale deed was not valid, the occupation of the land by the appellant can be treated only as that of an encroacher. As rightly pointed out by the learned single Judge, the definition of the expression “encroacher” under the Act is very wide to include persons like the appellant.

13. Therefore, we find no reasons to interfere with the order of the learned single Judge. Hence, the writ appeal is dismissed. No costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

N. BALAYOGI, J

Date: 20-06-2018

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